The meeting was called to order at 9 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.53)

Part 2 of the draft Statute (*continued*)

1. **Mr. NEGA** (Ethiopia) said that he strongly supported the inclusion of aggression and that, given the political will and flexibility, a definition could be agreed upon, as a number of proposals could serve as a basis for discussion.

2. He favoured the unified approach to treaty crimes and believed that terrorism should be included. The threshold for war crimes provided in options 1 and 2 was unnecessary; he therefore preferred option 3 though he might be able to accept option 2.

3. Since it would hardly be possible to make an exhaustive listing of all weapons that caused superfluous injury or unnecessary suffering or were inherently indiscriminate, he preferred the generic approach contained in option 3 of section B (o), but could support option 2.

4. Non-international armed conflicts should be included, being the main causes of crimes within the Court's jurisdiction. A form of words that would include non-international armed conflicts and would also stress the principle of complementarity could lead to a compromise.

5. **Mr. BACYE** (Burkina Faso) said that he associated himself with the remarks made by Lesotho on behalf of the African Group, as well as with the remarks made by South Africa and others. The Court's Statute should include genocide, crimes against humanity, war crimes, and aggression, although the latter was difficult to define.

6. He had reservations concerning the inclusion of treaty crimes but would be flexible if a majority emerged in favour of their inclusion.

7. He agreed to the definitions of genocide and crimes against humanity, preferred option 2 under section B (o) and supported the inclusion of sections C and D. His preference on aggression was for option 1, but a definition should be presented and the Cameroonian proposal should be examined.

8. **Mr. MAHMOOD** (Pakistan) said that, in a spirit of compromise, he supported the inclusion of genocide as a crime against humanity, though crimes against humanity occurred only in armed conflict.

9. He supported option 1 on the threshold for war crimes, since the Court would deal with exceptional situations. He could not accept the inclusion of C and D on internal armed conflicts.

10. Aggression should in principle be included in the Statute, but a proper definition was needed, and the inclusion of that crime should not be used to justify a role for the Security Council in the operation of the Court. He was prepared to examine the question of elements of crimes, provided they served only as guidelines and that the entry into force of the Statute was not delayed by any discussion on that subject.

11. **Mr. AL ANSARI** (Kuwait) said that he supported the proposal by the Syrian Arab Republic with regard to the *chapeau* of article 5.

12. The Court's jurisdiction should be confined to crimes, including crimes against humanity, that were committed in armed conflicts. He noted that subparagraph (g) of paragraph 1 under crimes against humanity mentioned the need for further discussion. There should also be references to other forms of forced sex, pregnancy and other related matters.

13. Subparagraph (h) did not take into account the reference in document A/CONF.183/C.1/L.44, indicating that the word "gender" referred to both male and female. That aspect should be highlighted.

14. He did not favour the minimum standpoint in the *chapeau* of the "War crimes" part and preferred option 2. Aggression should be included, taking into account the definition of such crimes in General Assembly resolution 3314 (XXIX).

15. If it were the general view that treaty crimes should be included, they should be defined clearly and unequivocally, particularly terrorism. His country was a party to a recent international convention on combating terrorism that contained a definition of the crime. That definition and other positive elements of the convention should be taken into account.

16. **Mr. KUZMEMKOV** (Russian Federation) said that his delegation had always been in favour of including aggression within the jurisdiction of the Court and hoped that it would be possible to agree on a definition. It should be understood that the Security Council would take the preliminary decision regarding determination of aggression.

17. He was in favour of including the most serious and dangerous acts of terrorism in the Court's Statute but would not insist. Consideration of that issue might be left to a future review conference.

18. Since the Court was to focus on the most serious crimes that represented a threat to peace and security, option 1 was the only choice regarding jurisdiction. He agreed with some delegations that there was no substantial difference between options 2 and 3, so that a compromise based on option 2 would not be easy.

19. As to weapons, he preferred option 1 under section B (o), given a development of subparagraph (vi) to include weapons which would be subject to an overall prohibition in the relevant international agreement. The text would have to be adopted by consensus, by the overwhelming majority of members of the General Assembly, or by a diplomatic conference convened under United Nations auspices. The parties to the resultant treaty should at least all be parties to the Statute.

20. In view of the polarization of views on the inclusion of conflicts of a non-international character, it would be a great achievement if section C could be included. He understood the efforts of a number of delegations to include section D, but saw little justification for that. Extending standards applied in international armed conflicts to internal conflicts could be discussed at future international humanitarian law forums. The Conference should make use of normal conventional and customary laws relating to internal conflicts, and discussion should not go beyond the framework of Additional Protocol II to the Geneva Conventions in that respect.

21. Though his country followed the continental legal system, it did not see any obstacle to developing definitions of elements of crimes for inclusion in the Statute, provided that such elements were an essential constituent.

22. **Ms. KAMALUDIN** (Brunei Darussalam) said that she supported option 2 of the war crimes *chapeau*. She also supported option 2 under section B (o) but was flexible on that point. She was willing to work towards a solution of the problem regarding differences on sections C and D and shared the majority view for the inclusion of the elements of crimes.

23. She would not object to the inclusion of drug crimes in the Statute and had an open mind on paragraph (p *bis*) with regard to rape and other sexual offences.

24. **Mr. HUARAKA** (Namibia) said that he associated himself with the remarks made by the South African representative on behalf of the Southern African Development Community (SADC) countries. He hoped that it would be possible to develop an acceptable definition of aggression so that the crime could be included in the Statute.

25. Some treaty crimes should be included, though definitions were not yet clear enough. After having heard the comments of other delegations, he preferred option 2 under the war crimes *chapeau*. He also preferred option 2 on weapons under section B (o) because that would allow the addition of weapons as yet undeveloped.

26. In common with several African delegations, he believed that the question of internal conflicts must be addressed, since in one case the entire Government had been involved in genocide and the judicial system *in situ* had not been effective.

27. Efforts to develop certain elements such as jurisprudence should not delay efforts to adopt the Statute and establish the Court.

28. **Mr. SCHEMBRI** (Malta) said that he supported the inclusion of aggression and that option 1 under that heading could serve as a reference point for further discussion in order to establish individual criminal responsibility.

29. Under paragraph 1 of article 10 on the role of the Security Council, he supported option 1.

30. He favoured the inclusion of sections C and D, since international law had developed to a point where individuals could be held criminally responsible for serious violations of humanitarian law in non-international conflicts.

31. He strongly disagreed with the limitation of the Court's jurisdiction embodied in option 1 of the war crimes *chapeau*, and said that the Prosecutor should be able to prioritize and choose the more serious crimes and that it was the duty of the Court to take into account the gravity of a crime in determining a sentence. The words "shall have jurisdiction in particular when committed as a part of a plan or policy" in option 2 were ambiguous: either the Court had jurisdiction or it did not. However, in a spirit of compromise, he would be prepared to be flexible.

32. He was also ready to compromise on treaty crimes, which might be dealt with in a review conference.

33. **Mr. FLORIAN** (Romania) said that aggression must be included if a generally agreed definition could be obtained and if there were clear provisions regarding the role of the Security Council.

34. His delegation had no strong views on treaty crimes but preferred that the Court deal only with core crimes. He supported the inclusion of sections C and D. On the question of weaponry in section B (o), he preferred option 1, though further discussion was still needed on subparagraph (vi).

35. Consideration of elements of crimes could be deferred to a future Preparatory Commission meeting. Though he did not believe it necessary to have a threshold for war crimes, he could accept option 2 as a compromise.

36. **Mr. BALDE** (Guinea) was in favour of including genocide, crimes against humanity and war crimes within the Court's jurisdiction. However, there were difficulties regarding the definition of aggression and the preponderant role of the Security Council in that context. He associated himself with the statement made by the delegation of Lesotho on behalf of the African Group.

37. He preferred option 3 regarding a threshold for war crimes, as it seemed more appropriate to deal with the full range of such crimes. It would be premature to include nuclear weapons under section B (o) as there was no treaty banning them, so that he preferred option 1.

38. In view of the Ottawa Convention, anti-personnel mines should be included under subparagraph (vi) of option 1, Section B (o).

39. **Mr. MORSHED** (Bangladesh) said that he opposed option 2 on aggression but supported option 1. Treaty crimes should be included, but his delegation was flexible regarding the relevant procedure. Since his country's law had no provision for a threshold for war crimes, he favoured option 3 but could accept option 2.

40. He supported option 2 of section B (o) as a basis for continued discussion. In section C, he supported option 1 but believed that a broader agreement could be achieved by stipulating a higher threshold. On section D, option 2 would facilitate consensus.

41. There were so many substantive and procedural implications regarding elements of crimes that it would probably be impossible to find an ad hoc answer to their inclusion.

42. **Ms. VEGA** (Peru) said that she supported the inclusion of genocide as defined in the 1948 Geneva Convention, and of the category of mass or heinous crimes. She hoped that an acceptable definition of aggression would be worked out, particularly as to the role of the Security Council. In the war crimes *chapeau*, she preferred option 3. With regard to sections A and B, it was most important to classify the elements of crimes so that the Court could properly deal with offences. She agreed with Mexico that there should be further endeavours to round out the offences aspect. Although the matter was complex and various international instruments already existed on treaty crimes, her delegation was flexible with regard to their inclusion.

43. **Mr. ROCHEREAU** (France) said that his country had always supported the inclusion of aggression and was in favour of the option which provided a strict definition and preserved the prerogatives of the Security Council.

44. His country had a very reserved position on the inclusion of treaty crimes, since they were of quite a different nature from the core crimes. Though other international instruments were already in force with regard to treaty crimes, he did not rule out an imaginative solution.

45. His country joined the emerging consensus on option 2 with regard to the war crimes threshold and was prepared to accept the drafting proposed by the Chair for (a *bis*) and (b) of section B. However, he considered that the provisions taken from Additional Protocol I should be read in the light of the declarations by States parties to that Protocol.

46. His delegation preferred option 1 of section B (o) and supported the comments made by the United Kingdom delegation on subparagraph (vi) of that paragraph. He agreed with the comments made by the Austrian representative on behalf of the European Union with regard to sections C and D.

47. In a spirit of compromise, he was prepared to help ensure that the adoption of the text on elements of crimes did not delay the establishment of the Statute.

48. **Mr. NIYOMRERKS** (Thailand) supported the inclusion of aggression in the Statute and preferred the relevant option 1. However, the role of the Security Council should be mentioned, as well as that of the General Assembly, as in the uniting for peace resolution. The text of option 1 would have to be improved to reflect those elements.

49. Treaty crimes should also be included, but, in view of time constraints, it might be preferable to consider them at a review conference, if a provision to that effect were reflected in the documents of the Conference.

50. His delegation supported option 1 in the war crimes *chapeau* but would be prepared to accept option 2 if a consensus emerged. With regard to section B (o), he supported the explicit inclusion of nuclear weapons contained in subparagraph (vi) under option 2. However, he would be prepared to join in a general consensus on option 1 if a reference to the use of nuclear weapons could be included as explicitly as possible.

51. He could not accept sections C and D but supported the inclusion of elements of crimes, given consistency with the Statute and the relevant conventions.

52. **Mr. ZABALLA GOMEZ** (Spain) said that he associated himself with the remarks by the representative of Austria on behalf of the European Union.

53. He supported option 1 on aggression which, though rather restrictive, addressed the concerns of various countries.

54. Since no consensus seemed to be emerging on treaty crimes, they should not be included in the Statute, though a subsequent review might be possible. Crimes against United Nations personnel were not treaty crimes in the strict sense but were being discussed in the context of war crimes. On that understanding, he supported their inclusion. In the war crimes *chapeau*, he supported option 2, which used the words "in particular", as it might command consensus. He supported option 1 in section B (o) on prohibited weapons, which had been substantially improved, particularly with regard to the role of the Assembly of States Parties in determining what weapons should be prohibited.

55. War crimes committed in conflicts of a non-international character should also be dealt with; he therefore supported the inclusion of sections C and D. A consensus seemed to be emerging on that point.

56. There were some positive aspects in the list of elements of crimes but difficulties might arise in seeking to obtain consensus, which might impede the entry into force of the Statute. He therefore welcomed the efforts made by the United States delegation to avoid any such eventuality.

57. **Mr. PADILLA** (Guatemala) said that he would welcome a solution for including the crime of aggression, along the lines of the Mexican suggestion. If that were impossible, he could agree to option 1, for the reasons expressed by France, among others.

58. Since his country had ratified the two Additional Protocols to the Geneva Conventions, he was prepared to accept the inclusion of sections C and D. However, if, as mentioned by the Mexican delegation, common article 3 could be used to resolve the difficulties of countries that had not signed Additional Protocol II, that would also be acceptable to him.

59. He did not favour the mention of thresholds with regard to war crimes, but if that concept had to be included in order to reach a consensus, he would prefer option 2.

60. As the depositary of the Tlatelolco Treaty, he favoured option 2 under section B (o) on prohibited weapons, since it included both nuclear weapons and anti-personnel mines. The difficulties of some delegations might be met if it were considered that nuclear weapons were regarded as essentially prohibited for use in attack but not in defence. However, for the sake of a compromise, he could accept option 1.

61. If necessary in order to arrive at a consensus, terrorism and attacks against United Nations personnel could be left aside for the time being.

62. Correct definition of the elements of crimes was absolutely essential.

63. **Mr. FADL** (Sudan) said that he supported the inclusion of section B (f). For reasons he had already mentioned, he thought that section D should be deleted.

64. The phrase "not military objectives" in section B (c) was not satisfactory and the original draft was preferable. He would elaborate further on that point in consultations with other delegations. He supported the Egyptian delegation's statement concerning Additional Protocol II to the Geneva Conventions. If the language contained in those Conventions were not included, it would complicate the problems with regard to sections C and D. The Court would be impartial if internal conflicts were subject to the criterion of admissibility and the powers of the Prosecutor and States parties were also subject to that criterion.

65. He supported inclusion of the crime of aggression but said that, if there were no definition of the crime, perpetrators would not be prosecuted.

66. **Mr. BALLACILLO** (Philippines) said that he favoured the inclusion of aggression in the Statute, subject to a clear definition. Treaty crimes should also be included, though he would be willing to consider the views of other delegations.

67. No qualification or conditions should be required with regard to a threshold on war crimes. He therefore supported option 3. With respect to weapons of a nature to cause superfluous injury and unnecessary suffering, he supported option 2 of section B (o).

68. He was in favour of retaining sections C and D on armed conflict of a non-international character.

69. He supported automatic jurisdiction of the Court over core crimes and an opt-in or State-consent regime for other crimes. Accordingly, he also advocated according *proprio motu* power to the Prosecutor over core crimes, subject to adequate safeguards.

70. **Mr. LARREA DAVILA** (Ecuador) said that the Court should have universal jurisdiction over the core crimes. Aggression should be included in the Statute, with proper regard for legality and international jurisdiction and law. A clear statement should be made about the role of the Security Council, in order to guarantee the independence of

the Court in applying the principle of complementarity. With regard to the question of thresholds, his delegation thought option 3 was the most acceptable. As to the use of weapons and methods causing superfluous injury or unnecessary suffering specified in section B (o), his delegation considered that option 3 was best; however, if option 1 could command consensus, he could support it, but in that case more work would have to be done on subparagraph (vi).

71. His delegation supported the inclusion of sections C and D.

72. **Mr. DOUDECH** (Tunisia) said that he associated himself with the statements made by the representative of Lesotho on behalf of the African Group in reply to the questions posed by the Chair. He also supported the inclusion of terrorism in the Statute as a crime against humanity and would like to see the adoption of a generally agreed text. Similarly, he supported the inclusion of other treaty crimes and the crime of aggression. On that, as on other issues, a consensual approach would be necessary, taking into account the viewpoints of various delegations and ensuring the adoption of a Statute that would find broad support.

73. **Mr. PERALBA GARCIA** (Andorra) said that aggression should be included but must be properly defined, taking into account the role of the Security Council. He supported the Belgian proposal that treaty crimes be mentioned in the Final Act as a subject for a later conference.

74. His original view on thresholds was that they were not needed, but, after listening to the arguments put forward by the United States, he considered that option 2 would be an acceptable compromise. In section B (o) on weapons, he supported option 1. Sections C and D should be included in the Statute.

75. He recognized that some delegations needed a provision on elements of crimes but thought that the matter should be considered later in order not to hinder the work of the Conference.

76. **Mr. SOARES DA GAMA** (Guinea-Bissau) said that he supported the statements by Lesotho on behalf of the African Group in favour of including the core crimes within the jurisdiction of the Court. A satisfactory definition of aggression was also needed.

77. Since it seemed difficult to arrive at general agreement on treaty crimes, he preferred option 2 under article 9 of the draft Statute. On the question of thresholds in the context of war crimes, he preferred option 3 but could accept option 2. Under section B (o), he could agree to option 1. Elements of crimes could be established after the Conference, provided the entry into force of the treaty establishing the Court would not be hampered thereby. He attached prime importance to the inclusion of sections C and D, since his country continued to suffer from non-international armed conflicts.

78. **Mr. MONAGAS** (Venezuela) said that he supported the inclusion of aggression on the basis of a clear and specific definition and considered that the definition contained in document A/CONF.183/C.1/L.53 under option 1 was acceptable.

79. Since the Court was to be a new body, its initial jurisdiction should cover core crimes. He supported the idea of a future review mechanism for including such offences as treaty crimes.

80. Under section B (o), he preferred option 2, which included nuclear weapons and anti-personnel mines. He understood the difficulties of some delegations on that issue and could join in a consensus based on a definition that would make some reference to that category of weapons. He supported the inclusion of sections C and D.

81. The Statute should contain some indication that the Preparatory Commission should prepare texts on elements of crimes, after the closure of the current Conference. His delegation agreed to the automatic jurisdiction of the Court for genocide in accordance with the 1948 Convention but thought that the consent of States parties would be called for with regard to other crimes. He therefore supported option 1 of article 7.

82. **Mr. AL-AMERY** (Qatar) said that he accepted the inclusion of aggression as one of the core crimes, but that there must be a precise definition linked to General Assembly resolution 3314. He favoured option 3 in the war crimes *chapeau* but could support option 2.

83. On section B (o), he preferred option 2 because it included nuclear weapons and anti-personnel mines. So far as sections C and D were concerned, the Court should not have jurisdiction if States were correctly performing their duties.

84. A provision should be included concerning elements of crimes. In his understanding, the word "gender" in paragraph 1 (g) under crimes against humanity referred to both males and females.

85. **Mr. AL SHEIKH** (Saudi Arabia) said that aggression must be included within the jurisdiction of the Court, taking into consideration the definition contained in General Assembly resolution 3314.

86. Under section B (o), he preferred option 2 because it included a number of weapons whose use should be criminalized.

87. With regard to crimes against humanity, he pointed out that paragraph 1 (g) of the discussion paper said that further discussion was needed on that point. His preference was for the corresponding subparagraph (g) in the draft Statute, which mentioned rape, other sexual abuse and enforced prostitution but omitted other elements which might be controversial.

88. War crimes should be included, being grave violations of the Geneva Conventions and of Additional Protocol I. However, internal conflicts should be excluded, provided that a State was correctly meeting its obligations. The intervention of the Court would prejudice State sovereignty.

89. He had no objection to the inclusion of terrorism as defined in the recently adopted Arab convention on combating terrorism.

90. **Mr. Sayyid Said Hilal AL-BUSAIDY** (Oman) said that he was in favour of an effective, balanced and independent court with jurisdiction over genocide and crimes against humanity committed during armed conflicts. He favoured option 2 in the war crimes *chapeau* and also preferred option 2 in section B (o) on weapons.

91. Aggression should be included within the Court's jurisdiction, General Assembly resolution 3314 being the basis for a definition, and the Security Council's role in bringing a case should also be clearly defined. On the basis of the principle of uniting for peace, the General Assembly should also have jurisdiction in cases where a veto had been used.

92. Internal conflicts should not come within the Court's jurisdiction, except in the case of a non-functioning Government or central authority. However, he was flexible on that point.

93. Elements of crimes should be within the jurisdiction of the Court.

94. **Mr. BELLO** (Nigeria) said that he favoured the inclusion of the core crimes in the Statute. Under crimes against humanity, he favoured the inclusion of paragraph 1 (I) (*bis*) on apartheid. His delegation favoured option 1 in the war crimes *chapeau*. He also favoured option 2 of section B (o), since it was essential to include nuclear weapons and anti-personnel mines.

95. His acceptance of paragraphs (p *bis*), (r *bis*) and (t) would depend on the existence of acceptable definitions. He also supported the inclusion of aggression, if acceptably defined.

96. He would be grateful if the options referred to by the Syrian delegation at a previous meeting, which were not contained in the discussion paper, could be presented for further deliberation, in order to reach a consensus on defining aggression and also on the role of the Security Council.

97. It was necessary to consider not only aggression by States but also by armed bands against States. His country had sponsored a motion leading to a United Nations Convention against the Recruitment, Use, Training and Financing of Mercenaries. That should be reflected in the final consensus.

98. Without prejudice to the powers of the Security Council under the Charter, the General Assembly and/or the victim of aggression should have the right to refer a matter to the Court.

99. Though he sympathized with the desire to include treaty crimes, the list proposed was selective. Treaty crimes should be left to national courts.

100. His delegation favoured the elaboration of elements of crimes; relevant provisions should be included in the Statute.

101. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that the discussion paper did not reflect the principle of an independent, balanced and effective court that would hand out justice to all without any political influence.

102. The definition of aggression contained in option 1 was not comprehensive, confining itself to annexation and occupation, and option 2, excluding aggression, was unacceptable. Furthermore, the Court should not be prevented from exercising its jurisdiction in the event of a Security Council veto. The right of Members of the Security Council to refer cases to the Court was an entrenchment of domination.

103. Although her delegation said it was necessary to include aggression, it could not accept option 1 in the discussion paper and preferred the option in document A/CONF.183/C.1/L.37.

104. Embargo should be included as one of the crimes against humanity, in view of the suffering that it caused. She did not wish to see treaty crimes included and had no preference with regard to the war crimes *chapeau*, but preferred option 2 of section B (o). Sections C and D should not be included. She was ready to consider guarantees that would secure the integrity and sovereignty of States.

105. The question of elements of crimes should be considered at a later stage.

106. **Ms. DOSWALD-BECK** (Observer for the International Committee of the Red Cross), also speaking on behalf of the International Federation of Red Cross and Red Crescent Societies, said that war criminality did not admit a threshold provision. She recognized the desire to limit the jurisdiction of the Court to certain situations, so that option 2 did not seem to be a negative compromise. With regard to the list of crimes, she pointed out a problem with

regard to the word "perfidy", mentioned in section B (e). Perfidy in that context could apply only to objects to which the adversary had to give special humanitarian protection, but not to the uniform of an enemy. The correct word in the context in question would be "improper" rather than "perfidious".

107. Option 3 of section B (o) reflected existing law on weapons. However, if States were to choose option 1 or 2, it should be ensured that existing law was protected, in which context she considered subparagraph (vi) of option 1 to be extremely important. Bullets exploding in the body had long been prohibited and should therefore feature in (iii) of either option 1 or 2, or must be understood as covered by the word "expand".

108. Crimes committed in non-international armed conflicts were crimes under international customary law. She appealed to States to consider each crime separately and identify what conduct should be considered as criminal. Atrocities that had occurred in recent armed conflicts should also be taken into account. The input of States that had experience of internal armed conflicts would be very meaningful.

109. Certain safeguards did exist with regard to non-international armed conflicts, namely, with regard to the lower thresholds. It was necessary to distinguish between armed conflict and internal riots, for example. The normal interpretation was that a non-international armed conflict must be an armed confrontation of a military nature, which excluded sporadic events.

110. With regard to complementarity, she noted the valid concern of many States that governments should themselves be able to deal with crimes committed in internal armed conflicts. She therefore believed that the Court should have jurisdiction over such crimes only if the national authorities failed to do so.

111. It was extremely important to include a provision such as article Y of the draft Statute in order to protect existing humanitarian law and its development, under both treaties and custom.

The meeting rose at 10.55 p.m.